IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

MFA.No. 1660 of 1998(B)

O.P(MV).NO.265/1996 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR.
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APPELLANT:

ALI, S/O. KUNHEEDU HAJI,
ELAMKULAM VIDIOS,
POST OTTAPALAM,
PALAKKAD DISTRICT.

BY ADV. SRI.O.P.NANDAKUMAR,
SRI.V.A.AJAYI KUMAR.

RESPONDENTS:
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1. **ABDUL RASHEED, S/O. MAYINKUTTY,**
PULLAT HOUSE, NEAR MOSQUE,
PUTHANATHANI, KALPAKANCHERY,
MALAPPURAM DISTRICT.

2. **C.C. ABOO, S/O. POKKER,**
CHOLAKKARA CHEPPALA HOUSE,
MACHUNGAPPARA,
CHERIYAMUNDAM, TIRUR.

3. **THE NEW INDIA ASSURANCE COMPANY LIMITED,**
TRED DIVISION - 121400,
NEW INDIAS CENTRE,
17-A COOPERAGE ROAD,
BOMBAY - 400 039.

BY ADV. SRI.B.S.KRISHNAN (SR.),
SRI.K.ANAND.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

M.F.A. No. 1660 of 1998

Dated this the 17th day of July, 2007

Judgment

Koshy, J.

Appellant, aged 26, met with an accident by which he sustained very serious injuries. It is his case that while he was driving a motor cycle, a car driven by first respondent, hit on the motor cycle. The car bearing registration No. KL-10A/1960 was owned by second respondent and insured by the third respondent insurance company. The tribunal assessed Rs.51,596/- as compensation for the injuries sustained and deducted 50% of the above alleging 50% contributory negligence on his part. The accident is alleged to have occurred on 12.11.1993. The F.I.R. would show that drivers of both vehicles were negligent. No charge sheet was produced. It is true that PW1, in the interested testimony, stated that while he was going slowly, the car hit him from the opposite side. Documents produced show that it is a head-on collision in a public road. According to the counsel for the insurance company, claimant was overtaking another vehicle. Apart from producing Ext.A1

first information statement, the petitioner did not produce the scene mahazar or the vehiclel inspector's report or witnesses to show that the accident occurred solely due to th negligence of the first respondent driver. Therefore, we agree with the finding that both drivers were equally responsible for the accident.

2. With regard to the disability, tribunal assessed only a global sum and not granted compensation on a multiplier method. Rs.20,000/= was granted towards compensation for permanent disability and Rs.15,000/= was granted towards compensation for loss of earning power. Thus, total compensation for disability and loss of earning power was Rs.35,000/=. According to the petitioner, he was a Videographer, earning Rs.3,000/- per month, but, no evidence was produced to show that he was earing Rs.3,000/= per month. In the above circumstances, we are of the opinion that, at least, notional income for a non-earning person should have been fixed. If that be so, Rs.15,000/= is the notional income.

3. Doctor certified the following injuries:

> "He walks with a limbing over right lower limb. There are ugly scars over the right thigh. Right thigh is wasted 4 c.m. in circumference. There is shortening of 4

> c.m. in the right lower limb due to mal-union of fracture. Only 40 degree of flexion possible at right kneel joint. Recent X-ray showing mal-united fracture with angulation of 20 degree flexion at fracture site of right femur.
>
> According to McBride scale, his permanent disability is assessed as Twenty Three percent (23%)."

There is no material to disregard the above certificate. The certificate was marked with consent. Petitioner was aged 26. A three member bench of the Apex Court in Smt. Supe Dei and others v. M/s. National Insurance Co. Ltd. (JT 2002 (Suppl.1) SC 451) held that second schedule can be taken as a guideline for fixing multiplier. If that be so, compensation payable for 23% permanent disability will be Rs.15,000 x 18 x $\frac{23}{100}$ = Rs.62,100/=. Rs.35,000/- was awarded by the tribunal for disability and loss of earning capacity. Therefore, claimants are entitled to a balance compensation of Rs.27,100/=. For loss of actual earning, no amount was granted. If Rs.1,250/- is taken as the monthly income, for the period of treatment which is about four months, amount will come to Rs.5,000/=. So, additional compensation calculated is Rs.32,100/-, but,

there is 50% contributory negligence on the part of the claimant. Therefore, additional compensation payable will be Rs.16,050/-. We see no ground to enhance the compensation on other heads. The additional compensation of Rs.16,050/- should be deposited by the third respondent insurance company with 7% interest from the date of application till its deposit. On deposit of the amount, appellant is entitled to withdraw the same.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

vaa

J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.

M.F.A.NO.1660/98

JUDGMENT

Dated:17th July, 2007